Austral Amalgamated Tin Bhd and another appeal v Abdul Wahab bin Kopon & Ors and another appeal

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO A–02–478 OF 1999
MOKHTAR SIDIN, MOHD GHAZALI AND NIK HASHIM JJCA
4 MARCH 2004

Civil Procedure — Appeal — Right of appeal — Whether decision of Labour Office appealable as of right pursuant to s 77 of the Employment Act 1955

Civil Procedure — Appeal — Subordinate court appeal — Whether Labour Office was a 'subordinate court' under s 28 of the Courts of Judicature Act 1964

This appeal concerned the construction of ss 77 and 28 of the Employment Act 1955 ('EA') and the Courts of Judicature Act 1964 ('CJA'). The respondents filed a joinder claim of underpayment of termination benefits with the Labour Office pursuant to s 72 of the EA. The Labour Office registered the complaints as two complaints, but they were consolidated at the hearing. The Senior Labour Officer ordered the appellants to pay RM109,454.64 (in the first case) and RM14,346.18 (in the second case) to the respondents. The appellants appealed to the High Court. The respondents filed originating motions to strike out the appellants' appeal on the ground that the value of the subject matter was below RM10,000 (as none of the respondents' individual awards exceeded RM10,000) and the matter was not appealable by virtue of s 28 of the CJA. The High Court allowed the respondents' application. The Court of Appeal granted leave to appeal against the High Court's decision. Two issue for determination were: (i) whether the decision was appealable as of right pursuant to s 77 of the EA; and (ii) whether the Labour Office was a 'subordinate court' under the CJA.

Held, allowing the appeal with costs to follow the event:

(1) A party dissatisfied with the decision of the Labour Officer has a right of appeal to the High Court irrespective of the amount in dispute or the value of the subject matter by virtue of s 77(1) of the EA. The appellants had satisfied the requirements of s 77 as they were financially affected when the Labour Officer ordered them to pay RM109,454.64 and RM14,346.18 to the respondents, and being dissatisfied with the said order, the appellants therefore had the right to appeal to the High Court (see paras 5, 6).

(2) With regard to the second issue, the court held that the Labour Office was not a 'subordinate court' under the CJA. Under s 3(2) of the Subordinate Courts Act 1948, it is clearly specified that only the following courts are termed as subordinate courts, namely: sessions courts; magistrates' courts; and in West Malaysia only, Penghulu's Courts. The inquiry that was conducted by the Senior Labour Officer in the present case was the inquiry by virtue of the power under s 69 of the EA given to the Director General of Labour to inquire into any dispute between an employee and his employer. It was only an inquiry and not a court proceeding (see paras 7,8,10) .

[**Bahasa Malaysia summary**

Rayuan ini adalah mengenai tafsiran ss 77 dan 28 Akta Pekerjaan 1955 ('AP') dan Akta Mahkamah Kehakiman 1964 ('AMK'). Responden-responden telah memfailkan satu tuntutan percantuman untuk pembayaran faedah penamatan kerja yang kurang dengan Jabatan Buruh menurut s 72 AP. Jabatan Buruh mendaftarkan aduan itu sebagai dua aduan tetapi aduan-aduan itu telah disatukan pada masa pendengaran. Pegawai Buruh Kanan telah memerintahkan perayu-perayu untuk membayar RM109,454.64 (didalam kes pertama) dan RM14,346.18 (di dalam kes kedua) kepada responden-responden. Pearyu telah merayu kepada Mahkamah Tinggi. Responden-responden telah memfailkan usul permula untuk membatalkan rayuan perayu-perayu di atas alasan bahawa nilai perkara subjek adalah dibawah RM10,000 (memandangkan bahawa award-award individu responden-responden tidak melebihi RM10,000) dan perkara itu tidak dapat dirayukan menurut s 28 AMK. Mahkamah Tinggi membenarkan permohonan responden-responden. Mahkamah Rayuan memberikan kebenaran unutk merayu terhadap keputusan Mahkamah Tinggi. Dua isu untuk ditentukan adalah (i) sama ada keputusan itu dapat dirayukan sebagai hak menurut s77 AP dan (ii) sama ada Jabatan Buruh merupakan 'subordinate court' dibawah AMK.

Diputuskan, membenarkan rayuan itu dengan kos mengikut keadaan:

(1) Pihak yang tidak puas dengan keputusan Pegawai Buruh mempunyai hak untuk merayu kepada Mahkamah Rayuan walau apapun jumlah wang yang dipertikaikan atau nilai perkara pokok menurut s 77(1) AP. Perayu-perayu telah mematuhi peruntukan s 77 memandangkan mereka terjejas dari segi kewangan apabila Pegawai Buruh memerintahkan mereka supaya membayar RM109,454.64 dan RM14,346.18 kepada responden, dan oleh kerana mereka tidak puas dengan perintah itu, perayu-perayu mempunyai hak untuk merayu kepada Mahkamah Tinggi (lihat perenggan-perenggan 5, 6).

(2) Berkenaan isu kedua, mahkamah telah memutuskan bahawa Jabatan Buruh bukan 'subordinate court' di bawah AMK. Di bawah s 3(2) Akta Mahkamah Rendah 1948 (Akta 92), ia dikatakan dengan jelas bahawa hanya mahkamah-mahkamah berikut adalah mahkamah-mahkamah rendah, iaitu: mahkamah sesyen, mahkamah majistret, dan di Malaysia Barat, Mahkamah Penghulu. Siasatan yang dijalankan oleh Pegawai Buruh Kanan di dalam kes ini adalah siastan menurut s 69 AP yang diberi kepada Ketua Pengarah Buruh untuk menyiasat pertikaian di antara pekerja dan majikan. Ia hanya satu siasatan dan bukan prosiding mahkamah (lihat perenggan-perenggan 7, 8, 10).]

Notes

For cases on right of appeal, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 1177–1185.

For cases on subordinate court appeal, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) para 1225–1229.

For appeals, see 1 *Halsbury's Laws of Malaysia* para [10.11-001].

Legislation referred to

Employment Act 1955 ss 28, 77(1)
Courts of Judicature Act 1964
Subordinate Courts Act 1948 s 3(2)

A Ramadas (Ramadas & Assoc) for the appellants.
M Kulasegaran (Kula & Assoc) for the respondents.

Appeal from: Civil Appeals No 16–10 of 1995 and 16–11 of 1995 (High Court, Ipoh)

Nik Hashim JCA (delivering judgment of the court):

[1] This appeal concerns the construction of ss 77 and 28 of the Employment Act 1955 ('EA') and the Courts of Judicature Act 1964 ('CJA') respectively.

[2] The respondents, 208 of them, filed a joinder claim of underpayments of termination benefits with the Labour Office Ipoh pursuant to s 72 of the EA. The respondents were the employees of the appellants and they were retrenched by them. The Labour Office registered the respondents' complaints as Kes Buruh No 45/95, and Kes Buruh No 46/95. At the hearing of the said complaints the two cases were consolidated. The Senior Labour Officer made his decision on 2 October 1995 on both cases and ordered the appellants to pay the respondents a sum of RM109,454.64 in respect of Kes Buruh No45/95 and RM14,346.18 in respect of Kes Buruh No 46/95. However, individually none of the respondents was awarded exceeding RM10,000. The highest award made in one instance was at RM4,782.

[3] Dissatisfied with the two awards, the appellants appealed to the High Court. Meanwhile, the respondents filed originating motions to strike out the appeals on the ground that the value of the subject matter of the dispute was below RM10,000 and that there were no questions of law in the matter which therefore rendered the matter not appealable by virtue of s 28 of the CJA. On 23 August 1996 the High Court allowed the application made by the respondents to strike out the appeal made by the appellants. Leave to appeal against the High Court decision was granted by the Court of Appeal on 28 April 1999. Hence this appeal before us.

[4] Principally, there are two issues for our determination:

(i) Whether the decision of the Labour Officer is appealable to the High Court as of right irrespective of the amount in dispute or the value of the subject matter pursuant to s 77 of the EA.

(ii) Whether the Labour Office is a 'subordinate court' under the CJA.

[5] In our judgment, a party dissatisfied with the decision of the Labour Officer has a right of appeal to the High Court irrespective of the amount in dispute or the value of the subject matter by virtue of s 77(1) of the EA which states:

> If any person whose financial interests are affected is dissatisfied with the decision or order of the Director General under section 69, 69B, 69C or 73 such person may appeal to the High Court.

[6] This section is manifestly clear that there is nothing in the said section which imposes any conditions that such a right of appeal is to be barred if the amount in dispute or the value of the subject matter is below RM10,000. The appellants had satisfied the requirements of s 77 as they were financially affected when the Labour Officer ordered them to pay RM109,454.64 and RM14,346.18 to the respondents, and being dissatisfied with the said order, the appellants therefore had the right to appeal to the High Court.

[7] With regard to the second issue, we hold that the Labour Office is not a 'subordinate court' under the CJA. Section 28 of the CJA deals with civil appeals from subordinate courts which reads as follows:

> Civil appeals from subordinate courts.
>
> (1) Subject to any other written law, no appeal shall lie to the High Court from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject-matter is ten thousand ringgit or less except on a question of law.

[8] Under s 3(2) of the Subordinate Courts Act 1948, it is clearly specified that only the following courts are termed as subordinate courts, namely:

(a) sessions courts;

(b) magistrates' courts; and

(c) in West Malaysia only, Penghulu's Courts.

[9] Labour Office is not included in the said list. Thus, Labour Office is not a court.

[10] The inquiry that was conducted by the Senior Labour Officer in the present case is the inquiry by virtue of the power under s 69 of the EA given to the Director General of Labour to inquire into any dispute between an employee and his employer. It is only an inquiry and not a court proceeding. It is therefore erroneous to classify the Labour Office as an 'inferior court' in the definition of 'subordinate court' under s 3 of the CJA or a Labour Court as it is normally called, simply because the Labour Office is not a court in the first place. Moreover, there is no provision for a Labour Court in the EA.

[11] Accordingly, we allowed the appeal with costs to follow the event. We ordered that the case be remitted back to the High Court to be decided on merits and also ordered that the deposit be refunded to the appellant. The case was fixed for mention on 16 February 2004.

Appeal allowed with costs to follow the event.

Reported by Chew Phye Ken